

Lowell N. Hawkes (ISB #1852)
LOWELL N. HAWKES, CHARTERED
1322 East Center
Pocatello, Idaho 83201
Telephone: (208) 235-1600
FAX: (208) 235-4200
Attorney for Dwight G. Romriell

CLERK OF DISTRICT COURT
DISTRICT OF IDAHO
POCATELLO, IDAHO

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C.,
an Idaho professional corporation,

Plaintiff,

vs.

INTERDENT SERVICE
CORPORATION, a Washington
corporation,

Defendant.

Case No. CV-03-450-E

**DECLARATION OF
DWIGHT G. ROMRIELL
IN SUPPORT OF
MOTION TO QUASH
SUBPOENA DUCES TECUM**

DWIGHT G. ROMRIELL, declares as follows:

1. **Declaration.** This Declaration is made upon personal and professional knowledge and pursuant to 27 U. S. Code § 1746.

2. **Professional Status.** I am a practicing, Idaho-licensed dentist specializing in craniofacial/temporomandibular disease and disorders. I am one of 62 dental professionals nationwide who is participating in a nationwide study under the guidelines of the National Institute of Health to develop criteria and data related to the

diagnosis and treatment of temporomandibular disease and disorders. No other dentist in Idaho, Utah, Wyoming, Montana, Oregon, Wyoming, or Nevada is a participant in that study. I am also the only dentist in Idaho who is a Diplomate of the American Academy of Pain Management. I am also the only dentist in Idaho trained in the use of, and owning, Computerized Complex Motion Tomography equipment. I treat patients from a broad geographical area that includes Montana, Wyoming, Idaho and other states. There is only one other dentist in Idaho with some similar credentials to mine, Dr. Jamison Spencer, a younger professional practicing in Boise with 20 years less experience.


3. **Employment Agreement Expired.** My prior employment agreement with the Pocatello Dental Group expired on October 11, 2003. On September 8, 2003 Defendant Interdent sent me a letter directing that I vacate the Pocatello Dental Group premises on October 11th. This lawsuit thus occurs in the context of my setting up an independent professional practice in Pocatello but being willing to continue to treat patients and assist the dentists with which I was formerly associated in making the transition to the new practice.

4. **Service of Subpoena Duces Tecum.** This afternoon at about 2:05 p.m. I was served with a Subpoena Duces Tecum initiated by Defendant Interdent in the name of Dwight R. Romriell requiring my appearance for a deposition tomorrow morning at 9:00 a.m. The duces tecum portion of the Subpoena contained 16 categories of documents to be produced that followed two pages of definitions. A copy of that Subpoena Duces Tecum as served on me is attached.

5. No Witness Fee. No witness fee was served with the Subpoena.

6. Demands of Subpoena. Because of the short notice, my need to be able to meet with counsel in order to be prepared for my deposition, the substantial and broad demands of the Subpoena Duces Tecum, and the time limitations and schedule-matching realities on me and my counsel, it is not possible for me to comply with the Subpoena Duces Tecum on such short notice under the prevailing circumstances and be prepared for the deposition. In order to comply with the Subpoena Duces Tecum I would have to essentially "box-up" my office and deliver it to the deposition. It would take many, many hours just to assemble, transport to the deposition, and return to my office all that documentation to my office.

EXECUTED this 10th day of November, 2003.


Dwight G. ROMRIELL

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO****POCATELLO DENTAL GROUP, P.C., an Idaho professional
corporation****Plaintiff,****v.****INTERDENT SERVICE CORPORATION, a Washington
corporation,****Defendant,****INTERDENT SERVICE CORPORATION, a Washington
corporation,****Counterclaimant,****v.****POCATELLO DENTAL GROUP, P.C., DWIGHT G.
ROMRIELL, LARRY R. MISNER, JR., PORTER SUTTON,
ERNEST SUTTON, GREGORY ROMRIELL, ERROL
ORMOND, and ARNOLD GOODLIFFE,****Counterdefendants.****CASE NUMBER: CV-03-450-E-LMB****SUBPOENA DUCES TECUM IN A CIVIL CASE**11/10/03 e
2:05- No witness fee
furnished**TO: DWIGHT R. ROMRIELL,
13840 N. Moonglow Lane
Pocatello, ID 83202
(208) 2237-8404**☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

**ECHOHAWK LAW OFFICES
151 N. 4TH AVENUE, STE. A
POCATELLO, ID 83205****Tuesday, November 11, 2003, at 9:00 a.m.**☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **SEE ATTACHED EXHIBIT A**

PLACE

DATE AND TIME

**ECHOHAWK LAW OFFICES
151 N. 4TH AVENUE, STE. A
POCATELLO, ID 83205****Tuesday, November 11, 2003 at 9:00 a.m.**☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE: November 7, 2003

G.Rey Reinhardt, Attorneys for Defendant/Counterclaimant

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

G.REY REINHARDT
STOEL RIVES LLP
101 S. CAPITOL BLVD., SUITE 1900
BOISE, IDAHO 83702-5958
TELEPHONE: (208) 389-9000

PROOF OF SERVICE

DATE

PLACE

SERVED

NOVEMBER 11, 2003

SERVED ON (PRINT NAME)

DWIGHT R. ROMRELL

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained on the Proof of Service is true and correct.

Signed on November 11, 2003
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or

order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if:

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

DEFINITIONS AND INSTRUCTIONS FOR EXHIBIT A

Exhibit A - Definitions

- A. "Dr. Romriell," "you" and "yours" means Dr. Dwight G. Romriell.
- B. The "TMJ Center" refers to the new location at which Dr. Romriell is scheduling and/or treating patients, located at 1777 E Clark Suite 240, Pocatello, Idaho, 83201.
- C. "Group" refers to Pocatello Dental Group, P.C., and includes Group's past and present attorneys, advisors, accountants, agents, representatives, directors, officers, shareholders or employees, and its parent, affiliates, regional offices, sales offices, manufacturing facilities, divisions and departments.
- D. "2003 Employment Agreement" refers to the Dentist's Employment Agreement attached as Exhibit C to the Affidavit of Dwight G. Romriell, dated October 9, 2003.
- E. "Management Agreement" refers to the Dental Group Management Agreement entered into between GMS Dental Group Management, Inc. and Idaho Dental Group, P.A. on October 11, 1996.
- F. "ISC" refers to InterDent Service Corporation, and includes ISC's past and present attorneys, advisors, accountants, agents, representatives, directors, officers, or employees, and its parent, affiliates, regional offices, sales offices, manufacturing facilities, divisions and departments.
- G. "JOC" refers to the Joint Operations Committee, as defined in the Management Agreement.
- H. "TRO" refers to the Temporary Restraining Order issued by Honorable Don L. Harding in the Sixth District, Bannock County Case No. CV 03-4962 OC and extended by

Federal Magistrate Judge Boyle on October 29, 2003, in United District Court, Case No. CV 03-450-E-LMB.

I. "Person(s)" means a natural person, firm, proprietorship, association, corporation or any other type of organization or entity.

J. The singular form of a word, e.g., document or person, shall refer to the plural as well, and words used in the masculine gender also include the feminine.

K. "Correspondence" shall mean any transmission of words, thoughts, or information between or among two or more persons, and includes, but is not limited to, spoken words, conversation, conferences, discussion, talks and reports, whether transmitted in person or by any electronic device such as telephone, computer or radio, and/or by documents as defined below.

L. "Document" or "documents" means any handwritten, typed, printed, recorded or graphic matter, whether produced, reproduced or stored on papers, cards, tapes, belts, computer devices or any other medium in your possession, custody or control or known by you to exist, and further includes any non-identical copy (whether different from the original because of any alterations, notes, comments or otherwise), together with any supplements or attachments thereto or enclosures therewith, whether or not approved or executed.

M. "Refer or relate to", "relate to", "relate" and "in connection with" mean concerning, alluding to, responding to, reflecting, containing, pertaining, indicating, showing, evidencing, describing, disclosing, mentioning, connected with, commenting on, in respect to, discussing, analyzing, evidencing, constituting, bearing upon or comprising.

N. "E-mail" or "electronic transmission" shall mean any transmission of information by electronic or telecommunication equipment. A request for documents herein specifically includes all such electronic forms of communication.

Exhibit A - Document Requests

1. All documents and/or e-mails that refer or relate to the TMJ Center.
2. All documents and/or e-mails that refer or relate to the establishment of the TMJ Center.
3. All documents and/or e-mails that refer or relate to Persons providing services at the TMJ Center.
4. All documents and/or e-mails that refer or relate to employment agreements of Persons providing professional and/or non-professional services at the TMJ Center.
5. All documents and/or e-mails that refer or relate to services being provided at the TMJ Center.
6. All documents and/or e-mails that refer or relate to payments received by and/or owed to Dr. Romriell in connection with services provided at the TMJ Center.
7. All advertisements and/or public notices that refer or relate to the TMJ Center.
8. All documents and/or e-mails that refer or relate to communications between Group and Dr. Romriell regarding the establishment of an independent practice by Dr. Romriell.
9. Any documents that refer or relate to agreements and/or contracts between Dr. Romriell and Group.
10. All documents and/or e-mails that refer or relate to the purported employment of Dr. Romriell by Group after October 11, 2003.
11. All documents and/or e-mails that refer or relate to the 2003 Employment Agreement.

12. All documents and/or e-mails that refer or relate to Article 5.2 of the Management Agreement, including but not limited to any of the obligations and/or rights of either Group or ISC under that provision.

13. All documents and/or e-mails that refer or relate to communications between you and Group regarding the treatment of patients after October 11, 2003.

14. All documents and/or e-mails that refer or relate to communications between you and Group regarding potential professional liability claims for abandonment.

15. All documents and/or e-mails that refer or relate to communications between Dr. Romriell and any other Person about the role of the JOC under Article 5.2 of the Management Agreement.

16. All documents and/or e-mails that refer or relate to the TRO.

CERTIFICATE OF SERVICE

I certify that on this 10th day of November 2003, I sent by fax a copy of the foregoing to counsel for the parties as shown below:

James P. Price
Cooper & Larsen
P.O. Box 4229
Pocatello, ID 83205-4229
FAX 235-1182
Counsel for Plaintiff

G. Rey Reinhardt
Stoel Rives, LLP
101 South Capitol Blvd., Suite 1900
Boise, ID 83702
FAX 208-389-9040
Counsel for Defendant InterDent


LOWELL N. HAWKES